

Planning Commission Date: January 14, 2004

Item No. **\*4**

## MILPITAS PLANNING COMMISSION AGENDA REPORT

---

Category: Public Hearing

Report prepared by: Kim Duncan

Public Hearing: Yes:   X   No:       

Notices Mailed On: 12-31-03

Published On: 1-1-04

Posted On: 1-2-04

---

**TITLE:** USE PERMIT NO. UP2003-43

Proposal: Request for a new 40-seat restaurant (Indo Taste) without providing 9 required parking spaces.

Location: 273 West Calaveras Boulevard (APN 22-25-042)

**RECOMMENDATION:** Approval with conditions.

Applicant: Harry T. Kho, 5122 Morales Court, San Jose, CA 94587

Property Owner: Lisa (Fong) Lo, P.O. Box 5161, Redwood City, CA 94063

Previous Action(s): "S" Zone approval and amendments, use permits approvals and amendments

Environmental Info: Exempt

General Plan Designation: General Commercial

Present Zoning: General Commercial ("C2")

Existing Land Use: Shopping center

Agenda Sent To: Applicant and property owner

Attachments: Site plans, letter of description from the applicant

PJ No. 2351

---

\*4

## **BACKGROUND**

The Calaveras Plaza development was granted “S” Zone approval by the Planning Commission in 1976. Since then, amendments to the approval include modifications to architectural elevations, signs, parking lot re-striping and gates. In 1995, the Planning Commission approved a parking lot re-striping that resulted in 431 parking spaces. A more recent re-striping reduced the parking supply to 418 spaces and the approval of Use Permit No. UP2003-24 approved the removal of 2 parking spaces for a new trash enclosure, resulting in 416 total parking spaces on-site. Numerous use permits have also been approved for various projects within the plaza and, more recently, the expansion of several restaurants that included parking reductions.

## **Site Description**

The Calaveras Plaza is a neighborhood shopping center with two relatively large tenants (Save Mart and Kinko’s) and several smaller retail tenants, restaurants and two freestanding buildings. The 7.63-acre site contains approximately 75,000 square feet of retail space and is situated on four parcels that are located on the north side of West Calaveras Boulevard, west of Butler Street. To the north and west of the shopping center are single-family residential uses. To the south is the Serra Center and other retail uses. The tenant space is located in the former bank (Cal-Fed, Citibank) building that fronts West Calaveras Boulevard.

In the past there have been noise, odor and garbage problems associated with various restaurants in the shopping center. Past problems included improper food disposal, improper storage of garbage, odor problems and noise from garbage pickup and truck deliveries. Steps have been taken to rectify the problem including the installation of an “Odorestor” device to control odors at the trash enclosure(s) and construction of a new fence to help suppress noise. More recent approvals have required new trash enclosures that will also assist in controlling the odor and garbage issues.

## **THE APPLICATION**

The application is submitted pursuant to Section 19.03-36 (General Commercial, Conditional Uses, Restaurants), Section 57.02-18 (Conditional Uses, Permit the modification of automobile parking space requirements), and Section 57 (Use Permits) of the Milpitas Zoning Ordinance.

## **PROJECT DESCRIPTION**

The applicant is requesting approval to convert a 1,200 square foot tenant space (formally occupied by a bank) into a restaurant and bakery with a 64-square foot take-out area. As indicated on the floor plans, the restaurant would include a dining area with 36 table seats, 4 additional seats in the take-out area, kitchen, restrooms and storage facilities. The restaurant would offer typical Indonesian cuisines serving seafood, chicken, beef, vegetables, as well as Indonesian bakery desserts. No alcoholic beverages would be served. The proposed hours of operation are from 8:00 a.m. to 10:00 p.m. daily.

\*4

### Conformance with the General Plan

The proposed project complies with the City's General Plan in terms of land use. The proposed use does not conflict with any General Plan Principles and Policies, and is consistent with Implementing Policy 2.1-I-3, which encourages economic pursuits that will strengthen and promote development through stability and balance. It is also consistent with Policy 2.a-I-6, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.

### Conformance with the Zoning Ordinance

The proposed project is located in the General Commercial Zoning "C2" District. The project is consistent with the district's purpose and intent in that it complements the essential residential character of the area and provides the day-to-day shopping needs of the residential neighborhood by providing a restaurant within close proximity to homes and in that the district permits such uses with a Use Permit.

### ISSUES

#### Parking

When the shopping center was developed, parking was provided at a ratio of one stall per 200 square feet of retail space. The tenant space is 1,200 square feet, therefore 6 parking stalls are allocated to this space. Based on parking requirements for restaurant uses (as shown in Table 1 below), the proposed restaurant requires 15 parking spaces, therefore, the applicant is requesting a parking reduction for 9 parking spaces.

**Table 1.-Indo Taste Required Parking**

Use	Ordinance Required	Parking required
Restaurant with table seating	1 space per 3 seats	12 spaces
Take out area	1 space per 50 square feet	1 space
Take out seating	1 space per 2.5 seats	1 space
Employee parking	10% of total required parking	1 space
Total parking required		15 spaces

A parking study performed by PH Associates in February 2003 revealed that during the highest peak period (12-2 PM) the shopping center had 140 vacant parking spaces. The Planning Commission recently approved parking reductions for restaurant expansions to Anh Hong Saigon (9 spaces), King Crab (25 spaces), and Tofu House (6 spaces), Hai Noodle (7spaces), and the removal of 2 spaces for a new trash enclosure for the bank building in the shopping center (see Table 2). The only restaurant expansion completed to date is Hai Noodle, therefore it can be derived that the occupancy of the parking lot is 7 spaces less than when the study was performed.

\*4

Therefore, with 49 parking spaces approved for reduction, staff concludes there is currently enough capacity (approximately 91 vacant spaces) to accommodate the 9-space parking reduction for the proposed project.

**Table 2.-Calaveras Plaza Parking Availability**

<b>Restaurant</b>	<b>Spaces approved for reduction</b>	<b>Available spaces</b>
Available parking <sup>1</sup>		140
Abn Hong Saigon	9	131
King Crab	25	106
Tofu House	6	100
Hai Noodle	7	93
Trash Enclosure	2	91

1. Per parking study Feb. 2003

### **Odors & Solid Waste**

The building that the tenant proposes to locate in does not currently have access to a nearby garbage enclosure. When the space was used for a bank, garbage was stored in the building and then moved out for pickup. The Planning Commission recently approved two use permits for restaurants (Lee's Sandwiches and Hai Noodle Restaurant) in the subject building, which required the construction of a new trash enclosure. The applicant of the proposed project would be required to construct this trash enclosure should Lee's Sandwiches or Hai Noodle Restaurant fail to do so. Staff recommends a condition of approval to ensure that a trash enclosure is constructed and fully operable at the time of the applicant's certificate of occupancy.

### **Conformance with the Midtown Specific Plan**

The proposed project triggers Midtown Design Standards and Guidelines as it is expanding the existing tenant spaces' parking by more than 50% (6 allocated, 15 required). However, the King Crab building expansion approved by the Planning Commission on June 11, 2003 was conditioned to provide exterior building and site upgrades to the entire shopping center that are consistent with the Midtown Design Standards and Guidelines. The applicant for King Crab has recently submitted building permit plans to the City for the upgrades, which are currently being reviewed by staff. However, to ensure these improvements are constructed (e.g. King Crab withdraws their proposal to expand), staff recommends a condition of approval requiring the site upgrades below to be constructed prior to issuance of the applicant's certificate of occupancy. Once these improvements are installed, the proposed project would be in conformance with the Midtown Specific Plan for an existing development.

- **Section A.3.a (Parking Areas):** Trees for surface parking lots should be installed at a ratio of 1 tree for every 3-perimeter spaces and 1 tree for every 6 interior parking spaces.
- **Section A.3.j (Parking Areas):** Broadleaf and deciduous trees should be used.

X4

□ **Section C.3.a (General Planting Guidelines):**

- Use of native and drought-tolerant plant materials.
- Mulched planting beds as a replacement for turf areas, including the use of bark chips, wood grinding or leaves.
- Landscape plantings shall be grouped according to water needs.
- An automatic water system utilizing low volume drip, spray or bubbler emitters will be installed to efficiently water landscape areas.

- **Section D.3.d (Large Floorplate retail):** Continuous sidewalks should be provided from the primary street directly to the doorway. The applicant has designed and implemented a new pedestrian path that leads from Calaveras Boulevard to the King Crab entrance. The new walkway will include special concrete stamping to identify it as a walkway.

**Conformance with CEQA**

The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities"—"... permitting, ... licensing ... of existing ... private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination") of the California Environmental Quality Act (CEQA) Guidelines.

**Neighborhood/Community Impact**

The proposed restaurant is expected to have a positive community impact by providing a complementary use to the existing retail uses currently located in the shopping center. In addition, the project will incorporate revisions that will minimize any solid waste or odor concerns that may arise. Staff concludes that the restaurant as conditioned, will not negatively impact the surrounding neighborhood.

Staff received one phone call from a concerned resident expressing concern about the lack of existing parking at Calaveras Plaza. However, the parking study provided by the applicant, as addressed in the staff report, demonstrates there is adequate parking to support the request for approval without providing the 9 required parking spaces.

**RECOMMENDATION**

Close the Public Hearing. Approve the Use Permit No. UP2003-43, based on the findings and Special Conditions of Approval listed below.

**FINDINGS**

1. The proposed project is consistent with the General Plan in terms of land use and Policies 2.a-1-6 and 2.1-1-3, which encourage economic pursuits that strengthen and promote development and that can resist downturns in any one economic sector.
2. The proposed project, as conditioned, is consistent with the intent of the General Commercial "C2" District in that it complements the essential residential character of the area and

provides the day-to-day shopping needs of the residential neighborhood by providing a restaurant within close proximity to homes and in that the district permits such uses with a Use Permit.

3. The proposed project, as conditioned, is consistent with the applicable Midtown Design Guidelines and Development Standards in terms of landscaping and pedestrian connection site improvements.
4. The proposed use, as conditioned, is not expected to generate an increase in noise levels and, as conditioned, is not anticipated to affect parking and traffic, or generate odors or health and safety hazards impacting the surrounding area or nearby residential neighborhoods and therefore will not be detrimental or injurious to the public health, safety and general welfare.
5. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 (Existing Facilities) of the State CEQA Guidelines.

#### **SPECIAL CONDITIONS**

1. Use Permit No. UP2003-43 is for an approximate 1,200 square foot, 40-seat restaurant without providing 9 additional parking spaces, as shown on approved plans dated January 14, 2004, except as may be otherwise modified by these conditions of approval. Modifications to the proposed use may require review and approval by the Planning Commission of an amendment to this Use Permit. (P)
2. The maximum approved seating for this restaurant is 40 indoor seats, unless it is determined at the time of building permit review Building and Life Safety Codes allow fewer seats. Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8½ inches by 11 inches shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum restaurant seating: 40, as per Use Permit No. UP2003-43 granted by the Planning Commission on January 14, 2004." The minimum letter height of "Maximum restaurant seating:" shall be at least ¾ inch high. (P)
3. All roof-top equipment shall be shielded from view in a manner to the approval of the Planning Commission or its designee as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code. Prior to the issuance of any permit for any roof-top equipment which projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code, in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)
4. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)
5. Prior to building permit issuance, the applicant shall submit tenant improvement plans that incorporate a scrubber or carbon filter, or similar equipment, on the roof or vent to control

odors. The equipment shall be screened from view to the approval of the Planning Division and reflected on the tenant improvement plans. (P)

6. Should the applicant propose a new trash enclosure (per Condition of Approval No. 18), Planning staff shall review plans to ensure the proper location and that the enclosure complements the architecture and colors of the existing building. (P)
7. During any construction, the developer/applicant shall adhere to the following Best Management Practices (BMP's) as suggested in the Santa Clara Valley Non-point Source Pollution Control Program's "Best Management Practices for Industrial Storm Water Pollution Control": (P)
  - a. Store building materials under cover or in enclosed areas.
  - b. Before painting, spread a ground cloth to collect paint.
  - c. Mix paint indoors before starting work.
  - d. Keep paint buckets away from contact with storm water.
  - e. Capture any paint spills before they flow into a storm drain.
  - f. During painting cleanup use proper procedures and prevent paint from flowing into storm drains.
8. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)
9. The business owner shall post signs (in English and in one of the following additional languages: Vietnamese, Chinese, Filipino or Spanish) inside the premises for all employees, which identify procedures for the food delivery and disposing of garbage prior to the issuance of a certificate of occupancy. (P)
10. The preparation and storage of food is not permitted outside of the establishment. (P)
11. Washing of containers, equipment, and floor mats shall be conducted in the kitchen area so that wash water may drain into the sanitary sewer in perpetuity. (P)
12. Prior to issuance of a certificate of occupancy, the business owner shall submit a report detailing a program assigning restaurant staff perpetual responsibility for complying with the following guidelines (P)
  - g. Keep garbage dumpsters clean inside and out; replace dirty or leaking dumpsters with new, clean ones.
  - h. Double or triple bag waste to prevent leaking.
  - i. Place, do not drop or throw, waste-filled bags, to prevent leaking.
  - j. Keep the ground under and around the garbage dumpsters swept.

★4

- k. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
  - l. It is expected that Best Management Practices for solid waste handling will advance over time, thus it is the expectation that the applicant will modify their practices in accordance with future standards.
13. Prior to certificate of occupancy issuance, the following Midtown improvements for landscaping and the pedestrian connection shall be constructed and in place. Should they fail to be constructed by King Crab, the applicant shall submit plans for review and approval by City staff for the following which must be approved and in place prior to the issuance of a certificate of occupancy: (P)
- ☐ **Section A.3.a (Parking Areas):** Trees for surface parking lots should be installed at a ratio of 1 tree for every 3 perimeter spaces and 1 tree for every 6 interior parking spaces.
  - ☐ **Section A.3.j (Parking Areas):** Broadleaf and deciduous trees should be used.
  - ☐ **Section C.3.a (General Planting Guidelines):**
    - Use of native and drought-tolerant plant materials.
    - Mulched planting beds as a replacement for turf areas, including the use of bark chips, wood grinding or leaves.
    - Landscape plantings shall be grouped according to water needs.
    - An automatic water system utilizing low volume drip, spray or bubbler emitters will be installed to efficiently water landscape areas.
  - ☐ **Section D.3.d (Large Floorplate retail):** Continuous sidewalks should be provided from the primary street directly to the doorway. The applicant has designed and implemented a new pedestrian path that leads from Calaveras Boulevard to the King Crab entrance. The new walkway will include special concrete stamping to identify it as a walkway.
14. If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
15. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
16. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (F)



\*4

17. Prior to occupancy permit issuance, developer shall construct a trash enclosure large enough to serve the proposed and any future tenants of the building. The proposed enclosure shall be designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the enclosure. (E)
18. Property owner/manager shall be responsible for the trash collection and recycling services account for all the tenants of this property. Prior to occupancy permit issuance, the property owner/manager shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial services (E):
  - A. An adequate level of service for trash collection.
  - B. An adequate level of recycling collection.
  - C. Applicant shall maintain a Tallow account inside the enclosure and keep the tallow bins clean.
19. After the applicant has started its business, BFI commercial representative shall determine the adequacy of the solid waste level of services. If services found to be inadequate, the property owner/manager shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264. (E)
20. The developer shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)

Planning Division = (P)

Engineering Department -- (E)

## PROJECT PROPOSAL

Indo Taste is requesting a use permit for the use of a restaurant and bakery at an existing bank located at 275 W. Calaveras Blvd. The area of the space is 1,200 square feet, will seat approximately 40 people.

The menu consists of typical Indonesian cuisines serving seafood, chicken, beef, vegetables, as well as Indonesian bakery, desserts & drinks.

The hours of operation will be from 8am to 10pm and will open 7 days a week.

Monday, November 10, 2003

City of Milpitas  
Planning Department  
Attn: Ms. Kim Duncan  
455 East Calaveras Blvd.  
Milpitas, CA 95035

**Subject:**

**P-UP2003-43:** Request to operate a restaurant and bakery store at 273 West Calaveras Blvd, Milpitas, CA 95035

Dear Ms. Duncan,

I am writing this letter to respond to your letter dated October 29, 2003 regarding Indo Taste Use Permit Incomplete Letter.

Here is my respond for each item:

1. For bakery customers, we will provide a waiting/take-out area with 4 seats. Please see the attached Revised Floor Plan. This means we reduced our dining seats from 40 to 36 to accommodate the changes. There are 36 dining seats, and 4 seats in the 64 square feet waiting/take-out area.
2. The storage areas are combinations between regular shelving and over hang shelving. Please see the attached Revised Floor plan. The total storage is 96 Linear Feet.
3. The solid waste handling and pick up will be done in the manner which will accommodate the needs for all the three stores by increasing the number of pick up time per week.
4. There will be a total of 36 dining seats, plus the 4 waiting seats in the take-out area of 64 square feet.

Use	Square Feet/Seats	Parking Requirement
Restaurant Seat (Dining area): 1 space per 3 seats	36 seats	12 spaces
Take-out area: 1 space per 50 s.f.	64 s.f.	2 spaces
Employee (10% of 1,200 s.f. total space = 120 s.f) 1 space per 200 s.f.	120 s.f.	1 space
Total Parking Required		15 spaces

The current tenant space of 1,200 square feet has 6 parking spaces allocation. Therefore, an additional 9 parking spaces are needed.

**RECEIVED**

NOV 20 2003

**CITY OF MILPITAS  
PLANNING DIVISION**

If you have any question please contact me at 408-690-3701 or my Architect Mr. Eddy Shen at 408-745-0331

Sincerely,

A handwritten signature in black ink that reads "Harry Kho". The signature is written in a cursive, flowing style.

Harry Kho  
Indo Taste

Attachments: Revised Floor Plan

LEGEND

- HC ACCESSIBLE PATH
- EXISTING ADA SIGN @ ENTRY POINT COUNTED AS ABOVE PARKING

NOTES

1. BE CONTINUOUSLY ACCESSIBLE
2. HAVE MAXIMUM 1/2" BUMPS IN ELEVATION, OR PROVIDE CURB RAMPS COMPLYING WITH USC SECTION 11932.6
3. BE MINIMUM OF 48" IN WIDTH
4. WHERE NECESSARY TO CHANGE ELEVATION AT A SLOPE EXCEEDING 3% SHALL HAVE RAMPS COMPLYING WITH USC 11932.6
5. HAVE A MAXIMUM CROSS-SLOPE OF 1/4" / 1' (2.5%)

273 WEST CALAVERAS BLVD.

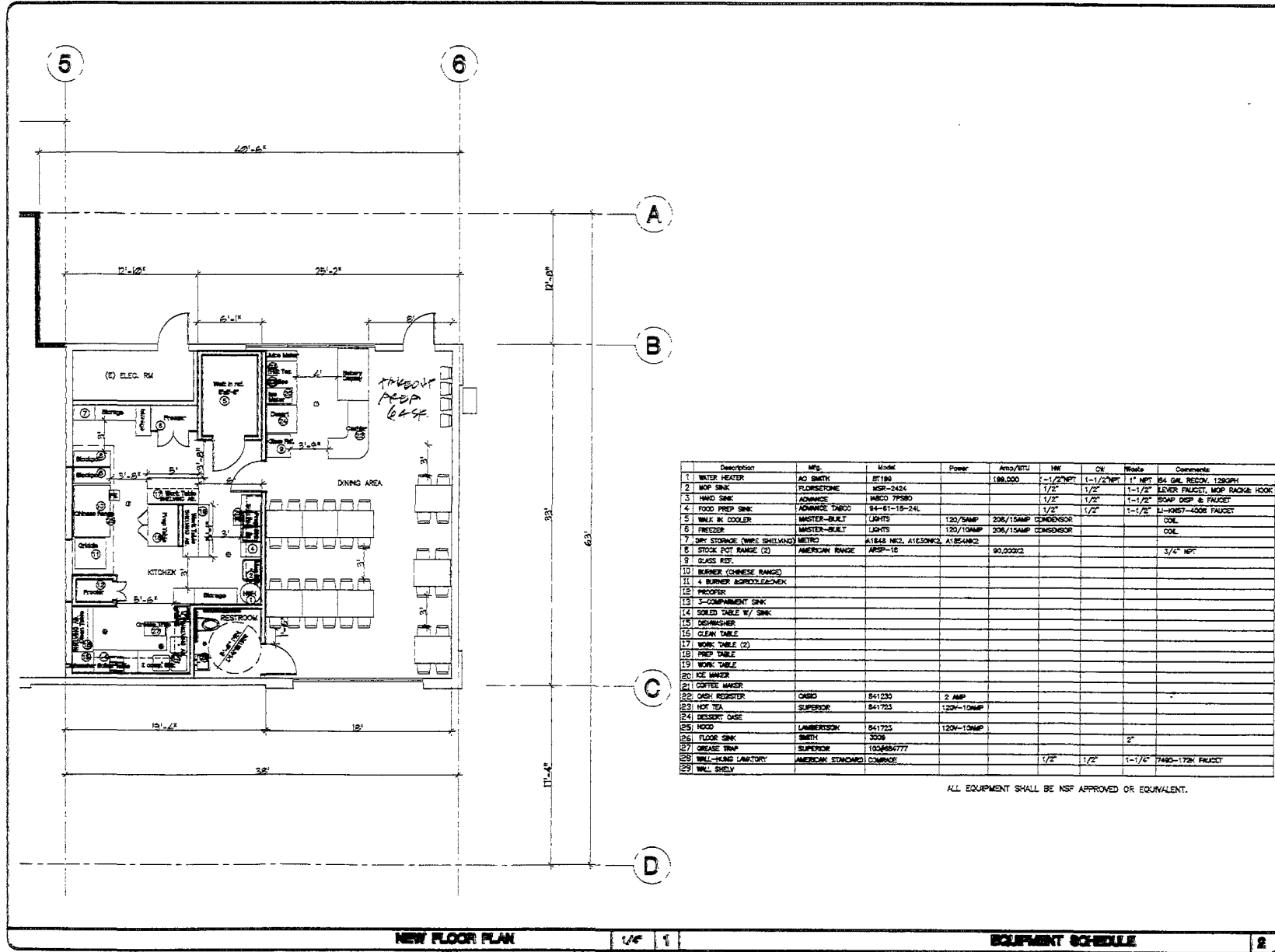


DATE	PROJECT
10-3-85	25.2210
SCALE	DRAWN
As Shown	JG
SHEET	

A-1

100

[illegible]



INDO TASTE

273 WEST CALAVERAS  
MILPITAS, CALIFORNIA 95035

**LRS**

**LRS ASSOCIATES**  
ARCHITECTURE AND PLUMBING

1600 PINE CREEK DRIVE SUITE 200, SAN JOSE, CALIFORNIA 95128  
TEL: (408) 748-0000 FAX: (408) 748-0000

ARCHITECT

DATE: 10-3-03 PROJECT NO.: 20-000

SCALE: 1/4"=1'-0" DRAWN: JLD

SHEET: A-2

OF SHEET: 2